

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES MOORE,)
)
Petitioner,)
)
v.) No. CIV-04-1735-F
)
HASKILL HIGGINS, JR.,)
Warden,)
)
Respondent.)

O R D E R

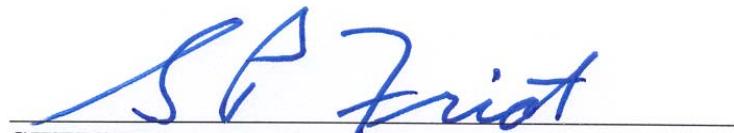
Petitioner, a state prisoner appearing *pro se*, has filed a Notice of Appeal [Doc. No. 20] and an Application for Certificate of Appealability [Doc. No. 20], to appeal the denial of his Petition for Writ of Habeas Corpus in this 28 U.S.C. § 2241 habeas action. *See* 28 U.S.C. § 2253(c)(1)(A); *Montez v. McKinna*, 208 F.3d 862, 869 (10th Cir.2000) (holding that § 2253(c)(1)(A) requires a state prisoner to obtain a COA regardless of whether he is seeking relief under § 2254 or under § 2241).

Petitioner is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. §2253(c)(2). Petitioner can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the

merits, . . . [t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* When a prisoner's habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner's claims, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

The Petitioner has not made this requisite showing, and, accordingly, his request for a COA is **DENIED**.

IT IS SO ORDERED this 29th day of August, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

04-1735p004(pub).wpd